

立法會  
*Legislative Council*

LC Paper No. CB(1)390/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/PL/PLW/1

**Panel on Planning, Lands and Works  
and Panel on Environmental Affairs**

**Minutes of joint meeting  
held on Monday, 13 October 2003, at 2:30 pm  
in the Chamber of the Legislative Council Building**

**Members present** : Members of the Panel on Planning, Lands and Works

Dr Hon TANG Siu-tong, JP (Chairman)  
Hon James TIEN Pei-chun, GBS, JP  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon James TO Kun-sun  
Hon TAM Yiu-chung, GBS, JP  
Hon Albert CHAN Wai-yip  
Hon WONG Sing-chi  
Hon IP Kwok-him, JP

Members of the Panel on Environmental Affairs

Hon CHOY So-yuk (Chairman)  
Hon Cyd HO Sau-lan (Deputy Chairman)  
Hon Martin LEE Chu-ming, SC, JP  
Hon LAU Kong-wah, JP  
Hon Miriam LAU Kin-yee, JP  
Hon Emily LAU Wai-hing, JP  
Dr Hon LAW Chi-kwong, JP  
Hon Henry WU King-cheong, BBS, JP  
Dr Hon LO Wing-lok, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Members attending** : Hon Margaret NG  
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon SIN Chung-kai

**Members absent** : Members of the Panel on Planning, Lands and Works

- \* Hon LAU Ping-cheung (Deputy Chairman)
- \* Dr Hon David CHU Yu-lin, JP
- \* Hon WONG Yung-kan  
Hon LAU Wong-fat, GBS, JP  
Hon Timothy FOK Tsun-ting, SBS, JP  
Hon Abraham SHEK Lai-him, JP

(\* Also members of the Panel on Environmental Affairs)

**Public officers attending** : Mr SUEN Ming-yeung  
Secretary for Housing, Planning and Lands

Miss Christine CHOW  
Principal Assistant Secretary (Planning and Lands)  
Housing, Planning and Lands Bureau

Mr John CHAI  
Director of Territory Development

Mr CHEUNG Tai-yan  
Project Manager (Hong Kong Island & Islands)  
Territory Development Department

Mr TANG Kam-fai  
Senior Engineer 2 (Hong Kong Island Division)  
Territory Development Department

Mr LI Chi-kwong  
Assistant Director of Planning (Metro)  
Planning Department

Miss Ophelia WONG  
Assistant Director of Planning (Board)  
Planning Department

Mr Simon LEE  
Acting Deputy Law Officer (Civil Law)

Department of Justice

**Clerk in attendance :** Miss Odelia LEUNG  
Chief Assistant Secretary (1)4

**Staff in attendance :** Ms Pauline NG  
Assistant Secretary General 1

Ms Bernice WONG  
Assistant Legal Adviser 1

Miss Becky YU  
Chief Assistant Secretary (1)1

Mrs Mary TANG  
Senior Assistant Secretary (1)2

Ms Sarah YUEN  
Senior Assistant Secretary (1)6

Ms Christina SHIU  
Legislative Assistant

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Action

**I. Election of Chairman**

Dr TANG Siu-tong was elected Chairman for the joint meeting.

**II. Central Reclamation Phase III**

(LC Paper No. CB(1)58/03-04(01) -- Information paper provided by the Administration

LC Paper No. CB(1)18/03-04(01) -- Background brief on Central and Wanchai reclamation

LC Paper No. CB(1)18/03-04(02) -- Judgment concerning an application from the Society for Protection of the Harbour Limited for interim injunction in respect of Central Reclamation Phase III

LC Paper No. CB(1)18/03-04(03) -- Judgment concerning an application for judicial review by the Society for Protection of the Harbour Limited in respect of Wanchai Reclamation Phase II)

2. A booklet on the New Central Waterfront was tabled at the meeting.

*(Post-meeting note: The booklet was circulated to members vide LC Paper No. CB(1)66/03-04 on 17 October 2003.)*

3. Miss CHOY So-yuk declared interests as a member of the Society for Protection of the Harbour Limited (SPH), which was a party to pending judicial proceedings in respect of the Central Reclamation Phase III (CRIII) works.

Statutory time limits for application for judicial review

4. Following up a member's enquiry on the statutory time limits for application for judicial review at the meeting of the Panel on Planning, Lands and Works on 9 October 2003, Assistant Legal Adviser 1 (ALA1) provided the following advice:

- (a) Applications for judicial review were made under Order 53, Rules of the High Court (Cap. 4 sub. leg.). No application should be made unless the leave of the Court had been obtained.
- (b) Order 53, Rule 4 provided that an application for leave to apply for judicial review should be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considered that there was good reason for extending the period within which the application should be made. "Promptly" meant as soon as practicable or as soon as the circumstances of the case would allow.
- (c) Section 21K of the High Court Ordinance (Cap. 4) provided that where the Court considered that there had been undue delay in making an application for judicial review, the Court might refuse to grant leave for making the application or any relief sought on the application if it considered that the granting of relief would be likely to cause substantial hardship to, or substantially prejudice the rights of any person, or would be detrimental to good administration.

Government's position on reclamation

5. At the invitation of the Chairman, the Secretary for Housing, Planning and Lands (SHPL) briefed members on the Administration's paper on the background, the latest development, and the Government's position regarding CRIII. He highlighted the following points -

- (a) Apart from the reclamation works in Central, the Town Planning Board (TPB) was presently reviewing the proposed reclamation works to be carried out in Wanchai North. The development of southeast Kowloon on the other side of the Victoria Harbour (the Harbour) also had to be reconsidered as the Kai Tak Airport was no longer in use.
- (b) The Government had no intention to carry out reclamation works at Tsim Sha Tsui East, Kowloon Point, Tsuen Wan Bay and Green Island as reported in the media. In fact, the Government's position at present was that apart from Central, Wanchai North and southeast Kowloon, the Government had no plan to carry out further reclamation works in the Harbour.
- (c) To maintain a balance of public interests, the Administration had resumed certain advance reclamation works, such as mud dredging and the filling-back with rock-fill, on a restricted scale in CRIII. The works programme would not cause irreparable damage to the Harbour.

6. With the aid of a power-point presentation, the Project Manager (Hong Kong Island & Islands), Territory Development Department (PM(HKI&I)/TDD) elaborated on the statutory procedures which CRIII had gone through and the facilities to be provided over CRIII.

*(Post-meeting note: The hard copy of the power-point presentation was circulated to members vide LC Paper No. CB(1)38/03-04 on 23 October 2003.)*

7. In relation to paragraph 5 (b) above, Miss CHOY So-yuk sought clarification of the Government's position on reclamation: whether reclamation would not be conducted in future or reclamation would still be conducted but the need would be assessed against the three tests (the three tests) highlighted in the High Court's judgment on the judicial review (JR) of TPB's decision in respect of the draft Wan Chai North Outline Zoning Plan (OZP) (the JR Judgment), namely, that there was a compelling, overriding and present need; that there was no viable alternative; and that there would be minimum impairment to the Harbour.

8. In response, SHPL confirmed that there was at present no plan for further reclamation. Should the Court of Final Appeal rule that the three tests be upheld, any reclamation contemplated in future would comply with the provisions of the Protection of the Harbour Ordinance (PHO).

Suspension of CRIII works

9. As regards paragraph 5(c) above, Mr WONG Sing-chi pointed out that as claimed by some green groups, the mud dredging works would do harm to the environment and hence should be stopped. In response to his call to suspend dredging works until after the above concern had been addressed or after the relevant judicial proceedings had been concluded, SHPL stressed that there was a need to honour the CRIII contract which had already been awarded. Suspension of works would lead to contractual claims. Presently the Administration was liaising with the contractor to re-arrange the works programme. He emphasized that the Government had given much thought to how CRIII should proceed, taking into account the law, the relevant contract and the pending judicial proceedings. The Acting Deputy Law Officer (Civil Law), Department of Justice (DLO(CL)/D of J(Atg)) echoed his points and reiterated that the Administration had taken care to ensure that works being done were not irreparable.

10. Mr WONG Sing-chi opined that given the grave public concern about reclamation, it was necessary for all the parties including the Administration, LegCo Members and the public to re-examine CRIII. For that purpose, public consultation on CRIII was needed. He enquired whether the Administration had made any contingency plan in the event that it lost in the JR on CRIII. In reply, SHPL said that CRIII had already gone through the statutory town planning procedures and public consultation. Since the CRIII contracts had already been awarded, there was limited flexibility on the part of the Administration to re-arrange the works programme. The Government would proceed with those works that would not cause any irreparable damages to the Harbour. Actions other than that would be contingent on the outcome of the JR.

11. Miss CHOY So-yuk opined that although the planning of CRIII had complied with the statutory procedure under the relevant legislation, in view of the JR Judgment on Wanchai Development Phase II (WDII) and the recent public concern on reclamation, the Administration should review the scope of the CRIII project.

12. SHPL emphasized that the current extent of reclamation at CRIII was already the minimum taking into account the need to provide land for essential transport infrastructure and to re-provision the existing waterfront facilities. SHPL also pointed out that there were diverse views in the community on CRIII and concerns about reclamation and traffic problems. The Administration, LegCo Members and the public should work together in finding a way to strike a balance

between the need to preserve the Harbour and the need to provide traffic relief. He further pointed out that in reviewing CRIII, there was also a need to consider safety and technical factors and the consequences if CRIII was not proceeded as planned. Since the CRIII contract had already been awarded, termination of the contract would lead to contractual claims.

13. Ir Dr Raymond HO Chung-tai opined that if the Administration believed that there was sound basis for CRIII to go ahead, it should not have temporarily suspended all marine works under CRIII pending the decision of the High Court in the application for interim injunction, thus incurring damages payment up to one million a day. Completion of relevant judicial proceedings might take four to five months and that might be more than sufficient for the dredging works and filling-back works. In that case, the contractor might have grounds to claim for delay of works. In response, SHPL clarified that the maximum daily compensation for suspension of works was one million but it did not mean that the contractor had to be compensated for \$10 million for suspension of works for ten days. Given that the contract lasted 55 months, there was scope for re-arranging the works programme to a certain extent. Meanwhile, the Administration was also endeavouring to solicit community support on the scope of CRIII so that its works could be resumed smoothly. Where necessary, the progress of works could be slowed down. In any event, the Territory Development Department would ensure any works done would not be irreparable.

Admin

14. In reply to Mr Albert CHAN on what the Administration would do if the public went against CRIII eventually, SHPL said that the Administration hoped a consensus could be reached on the issue. In response to Mr CHAN, SHPL agreed to provide the time-table specified in the relevant works contract for dredging and filling-back works.

15. Mr Martin LEE Chu-ming queried the appropriateness of one of the reasons given by the Administration to the Court when arguing for a continuance of the CRIII works, namely, that the works were not irreversible. He pointed out that to undo the reclamation works would require funding approval by the Finance Committee (FC) of the Legislative Council (LegCo). The Administration seemed to have pre-empted FC's decision in this regard. In response, SHPL explained that presently the CRIII works involved only mud dredging works. Such works were advance works necessary for the construction of the proposed seawall in CRIII and as such would not need to be undone.

16. Noting that the ongoing CRIII works would not be undone, Mr Martin LEE considered that the Administration and its legal representatives had misled the judge into believing that the progress of reclamation was not irreversible (para. 33 of the Judgment on the application for interim injunction over CRIII). In this regard, Mr James TO also questioned if the Administration had deliberately led the judge into believing that the financial losses incurred for suspending works would

outweigh those that might have to be incurred if the works had to be scaled back or removed entirely later. He reminded the Administration of its continued responsibility to draw the attention of the judge to any misunderstanding of its submissions.

17. In response, DLO(CL)/D of J(Atg) stressed that the application for the interim injunction was heard in open court. The evidence in support of the respondent's case was in the form of affirmations, given to the court and the applicant. The applicant and respondent presented their respective case with reference to affirmations filed into court. Each party also had the opportunity to comment on the evidence and submissions made by the other before the judge. Based on the evidence and the legal submissions made by both parties, the judge delivered his judgment. There was no question that the judge had been misled. SHPL further clarified that the Administration's legal representative was referring to the works currently underway when she said that the reclamation works was not irreversible. At the request of Mr Martin LEE and Mr James TO, DLO(CL)/D of J(Atg) agreed to provide the transcripts of the hearing and all the affirmations submitted by the Government to the Court.

Admin

#### Application of the three tests on reclamation

18. Ms Audrey EU Yuet-mee said that WDII and CRIII were related. The outcome of the appeal on WDII would impact the overall planning in Central including CRIII. She enquired whether the three tests stated in the JR Judgment were general tests to be applied to all reclamation works including CRIII. If so, the statutory procedures in relation to CRIII would have to be repeated.

19. In response, DLO(CL)/D of J(Atg) confirmed that the three tests should apply to all reclamation projects including CRIII. Although WDII had been ruled to have failed the three tests in the JR, it did not necessarily mean the same for CRIII. Each case was considered by the Court on its own merits. The problem in WDII lay with the proposed Harbour Park. How the outcome of the appeal on WDII would impact CRIII would depend on the judgment. Even if the Administration lost its appeal, the judge might still consider the construction of Central-Wanchai Bypass (CWB) justified. In that event, whether it was necessary to repeat all the statutory procedures in respect of the plans on CRIII would also depend on the judgment. The Administration was conducting a review of CRIII to ascertain whether it met the three tests.

20. Ms Audrey EU pointed out that if the three tests applied to all reclamation works, it would not suffice for the Administration to conduct an internal review to ascertain if CRIII fulfilled them. Section 3 of PHO required all public officers to have regard to the principle concerning presumption against reclamation in the Harbour. As such, all the statutory procedures in relation to CRIII would need to be



repeated and all public officers including the TPB would have to consider that principle in the scrutiny process.

21. Ms Audrey EU also noticed from the Judgment on the application for interim injunction (paras 25 and 26) that the Administration had completed review of CRIII and was satisfied that CRIII remained lawful. However, members had just been informed that the Administration was still reviewing if CRIII fulfilled the three tests. She was concerned if the Administration had misled the Court in this regard. In response, DLO(CL)/D of J(Atg) denied that the Court had ever been misled. He explained that CRIII was a very large project involving many parts to be reviewed in the exercise. Having reviewed the present works, the Administration was of the view that they could be proceeded and the works done were not irreversible. He reiterated that the OZP on CRIII was lawful and would remain effective until it was set aside by the Court. The Administration would provide the transcript of the hearing to enable members to understand what had been put before the judge.

Admin

#### Facilities to be provided in CRIII

22. Mr Albert CHAN Wai-yip opined that the inclusion of the Harbour Park in WDII was unnecessary and had violated PHO. He enquired if the planning approaches in WDII and CRIII were different. In response, the Assistant Director of Planning (Board), Planning Department explained that TPB had paid due regard to the requirement of PHO. It had lost the case in WDII mainly because its interpretation of PHO was different from that by the Court. As for CRIII, the minimum reclamation option had been adopted in response to calls to amend the original OZP to scale down reclamation.

#### *Pumping stations*

23. Mr James TIEN Pei-chun acknowledged that Members of the Liberal Party had supported CRIII in the past, and that they still supported the construction of the relevant proposed road works and pumping stations to provide cooling water for buildings in Central (the pumping stations). However, in the light of the present developments, he urged the Administration to explore ways to reduce the scale of reclamation in CRIII, such as by not reclaiming the areas between the pumping stations. In response, SHPL said that the Administration would welcome any proposal to minimize reclamation for detailed examination. He pointed out that the shoreline concerned would have to be made straight to accommodate a military dock for the People's Liberation Army as agreed under the 1994 Sino-British Defence Land Agreement. The Director of Territory Development (D of TD) supplemented that the seawall had been designed to incorporate a wave absorbing chamber. Miss CHOY So-yuk however pointed out that there would not be a need for the chamber if the reclamation works in the past had not worsened the wave conditions in the Harbour.

24. In response to Mr Henry WU King-cheong on the impact on the water flow should the scale of reclamation in CRIII be reduced, PM(HKI&I)/TDD confirmed that a smooth foreshore through reclamation would improve water flow and water quality.

25. Ms Miriam LAU Kin-ye stressed the importance of providing the long-awaited CWB but acknowledged the need to keep reclamation to the minimum. She enquired about the viability of reducing reclamation by adjusting the waterfront facilities to be provided in CRIII, such as by relocating the pumping stations to Piers 7 and 8 or the proposed public piers. PM(HKI&I)/TDD explained that if the pumping stations were to be relocated to the site as proposed, they would still have to be reprovisioned at the present proposed location in the interim when the land for new Pier 8 and public piers were being reclaimed. This proposal would necessitate relocation of the pumping stations and the associated cooling water mains twice. All the relocation costs would have to be borne by the buildings concerned. At Mr Albert CHAN's request, SHPL agreed to consider the feasibility of using fresh water for water-cooled air conditioning system so as to obviate the need for the pumping stations.

Admin

*Road networks*

26. Mr Henry WU was concerned about the impact on air quality along existing roads should the proposed new CWB and Road P2 network at CRIII be scrapped. In reply, PM(HKI&I)/TDD explained that traffic along the main east-bound outlet was forecast to double its current volume by year 2006. Without the proposed CRIII road works to provide timely relief, air quality in the area concerned would deteriorate. In response to Mr WU's request for relevant figures, PM(HKI&I)/TDD said that the environmental impact assessment report of CRIII did not cover the main east-bound outlet and the required figures were therefore not available. At Miss CHOY So-yuk's request, he agreed to advise on the cost-effectiveness of the CWB and Road P2 network with statistics/figures supporting the analysis.

Admin

27. To explore the viability of reducing the scope of reclamation in CRIII, Ms Emily LAU also asked for the latest traffic forecasts in Central to support the need for the CWB. SHPL undertook to provide the information.

Admin

*Waterfront promenade*

28. Mr Henry WU enquired about the capacity of the proposed waterfront promenade in CRIII and how it could help to disperse spectators when major events such as firework displays were held along the Harbour. In reply, AD of Plan (M) advised that the promenade could provide additional space roughly equivalent to the size of the Golden Bauhinia Square, Tsim Sha Tsui East and Queen's Pier put together. It was estimated that the proposed promenade could hold more than one hundred thousand people.

29. Miss CHOY So-yuk pointed out that the provision of a waterfront promenade had always been used as an excuse for reclamation but the land so produced had always been used for property development. In her view, without the promenade, the scale of reclamation in CRIII could be reduced. SHPL clarified that the promenade, partly to be placed over the CWB which would largely be in the form of tunnel, would not necessitate the reclamation of additional land.

30. In this respect, Dr LAW Chi-kwong noticed that paragraph 4 of the Administration's paper for this meeting stated that the land made available for the proposed road works and facilities would also 'provide an opportunity' for the promenade. However, paragraph 11 of the paper for the funding proposal on CRIII (PWSC(2002-03)41) stated that the Administration 'would form the required land under the CRIII project and then develop the promenade'. He suspected that the JR Judgment might possibly be the reason for the inconsistency as far as the land for the promenade was concerned. In paragraph 93 of the JR Judgment, the judge considered that TPB was wrong in not according the presumption against reclamation with due priority but to perceive the need to reclaim land for the Trunk Road system and essential infrastructure work as a planning opportunity to develop the Harbour into a world class waterfront, and additional proposed reclamation had been justified on the basis that it fulfilled the Board's vision for the Harbour. In response to Dr LAW on the land required solely for the promenade, SHPL emphasized that the scale of reclamation was limited to providing land for the essential transport infrastructure and reprovisioning existing waterfront facilities. The planning of all additional facilities, including the promenade, was based on the land made available for those purposes. He also explained that the difference in wording in the two information papers was only a matter of presentation. Dr LAW was unconvinced and drew the Administration's attention to public concern about the proposed width of the promenade.

#### Conduct of public hearings

31. Miss CHOY So-yuk urged the Administration to conduct public consultation on CRIII again. Mr Albert CHAN also opined that in the face of grave public concern about reclamation, there was a need to collect public views on whether to go ahead with CRIII and if so, how. Ms Emily LAU said that although she had supported CRIII in the past, she saw a need to conduct public hearings to examine how to strike a balance between the need for preservation of the Harbour and the undertaking of the committed CRIII works. She asked if the Administration would conduct public hearings. In response, SHPL suggested that LegCo conduct public hearings to collect public views.

32. On SHPL's suggestion to conduct public hearings by LegCo, the Chairman opined that while LegCo was ready to listen to views of organizations, the lead should be taken by the Administration which had the responsibility to consult

members of the public on major issues. Ms Emily LAU however considered that LegCo would listen to views of both individuals and organizations and proposed the establishment of an inter-Panel working group for the purpose. Ir Dr Raymond HO shared the view on the need for LegCo to listen to public views, in particular those of the green groups. Mr James TO however queried why the Administration was reluctant to take the lead in conducting public hearings.

33. In response, SHPL made the following points -

- (a) The Administration normally conducted public consultation through the district councils (DC). As all DCs had ceased operation until December 2003 pending the upcoming DC election, the Administration considered it appropriate to gauge public views through LegCo; and
- (b) LegCo conducted public hearings on issues of wide public concern in the past and this had been proved to be efficient and effective.

34. Mr James TO asked whether the Administration would provide all necessary information on CRIII, including internal documents and consultancy reports, to LegCo to facilitate the conduct of public hearings. In response, SHPL said that the relevant information had been provided to LegCo. D of TD supplemented that professional bodies, which were best qualified to comment on technical details, had been consulted and had indicated support for the scope of CRIII.

35. Pointing out that the judicial proceedings in respect of CRIII were under way, Miss CHOY So-yuk asked ALA1 to advise on the appropriateness of conducting public hearings on CRIII before the conclusion of the judicial proceedings. In response, ALA1 pointed out that Rule 41(2) of the Rules of Procedure of LegCo provided that reference should not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case. This subrule was applied by Rule 43 of the Rules of Procedure to proceedings in a committee unless the chairman of the committee ordered otherwise, and reflected what was commonly known as the sub judice rule. In other words, references by the Panel to matters awaiting adjudication in a court of law should be excluded if there was a risk that they might prejudice its adjudication. ALA1 further advised that prejudice might arise from an element of explicit or implicit prejudgment in the proceedings of the legislature in two possible ways -

- (a) The references might hinder the court in reaching the right conclusion or lead it to reach other than the right conclusion; and
- (b) Whether the court was affected in its conclusion or not, the references might amount to an effective usurpation of the court's judicial functions.

36. ALA1 confirmed that the relevant Rule of Procedure was essentially a principle of self-restraint and the two Panels could decide for themselves whether and how to proceed with the above hearings. She further pointed out that since no jury would be involved in the pending cases, the risk of sub judice should be small. Mr James TO was concerned about the implications in the event that information contradictory to the Administration's claims of minimum reclamation option was submitted in the public hearings. To address members' concern and at Ms Audrey EU's request, ALA1 agreed to provide written advice on the implications of the sub judice rule for meeting with deputations on CRIII or WDII. Members agreed that the two Panels would decide whether LegCo should conduct public hearings after considering the written legal advice.

37. Miss CHOY So-yuk proposed that the Panels should follow up on the review of TPB and the establishment of a Harbour Authority, and said that public consultation on the matters should be conducted. In response, SHPL said that the Administration was open-minded on the proposal to establish a Harbour Authority. He however highlighted the need to guard against expansion of the statutory advisory structure. The Chairman considered that the subjects raised should be discussed in other context.

### **III. Any other business**

38. There being no other business, the meeting ended at 5:35 pm.

*(Post-meeting note: The meeting was extended beyond 4:30 pm because Mr James TO Kun-sun, Chairman of the Bills Committee on Town Planning (Amendment) Bill 2003, agreed to cancel the fourth meeting of the Bills Committee scheduled for 4:30 pm.)*